

REMARKS

This Reply is in response to the non-final Office Action mailed on June 27, 2007 (Office Action). A Petition for Extension of Time (Three Months) with fee, and 3 replacement sheets of drawings, are filed concurrently.

1. **Rejection Under 35 U.S.C. § 101.**

This rejection is respectfully traversed. Claim 36, the only claim rejected on this basis, has been amended to recite how the "use" is practiced, i.e., the article is configured as a rear-view mirror. Reconsideration and withdrawal of the rejection is solicited. Should the Examiner have alternate suggestions, the Examiner is encouraged to contact Applicants' Attorney.

2. **Rejection Under 35 U.S.C. § 112.**

The rejection is respectfully traversed. Claims 26-28 and 31, the only claims rejected on this basis, do not recite a narrow range or limitation falling within a broad range or limitation as that basis for rejection is normally understood.

The concept explained in the Office Action at pages 3 and 4, involving broad language followed by "such as" and then narrower language, as the basis of an indefiniteness rejection, is submitted not to be applicable to the present claims as will be explained.

For ease of understanding Applicants' explanation, consider first claim 20 which uses the language "oxidized or nitrided".(emphasis added). The use of the word "or" does not create any indefiniteness in understanding the scope of the claim. The same word "or" is used in claim 26 and, as will be demonstrated, the manner in which the term "or" is used in claim 26 avoids a rejection based on indefiniteness or based on a narrower range within a broader range.

Each of parts (a), (b), (c) and (d) of claim 26 has two clauses separated by the word "or". Thus, in part (a), the reflective layer has a thickness in the range of between 20 and 100 nm or a thickness in the range of between 30 and 60 nm.(emphasis added) The presence of the word "or" separates part (a) of the claim into two clauses and avoids any indefiniteness. Contrary to the examples referenced in the Office Action, there does not exist a narrow range within a broad range, rather, two alternate ranges and there is no basis for misunderstanding the scope of patent protection desired. According to MPEP § 2173.05(c), the basis of a rejection is where the claim might recite a first range and thereafter a smaller range preceded by a word such

as "preferably", but in that situation, both ranges are in the same clause of the claim where, as here, there are two different ranges separated by the word "or".

Ex parte Hasche, 81 USPQ 481 (Bd. App. 1949) criticized the use of the words "which may be" and "such, for example as" in the claims as being indefinite. (Id. at 482) But, those criticized words are not involved in the claims of the present application. Ex parte Hall, 83 USPQ 38 criticized the use of the words "such as rock wool or asbestos" (Id. at 39) but "such as" is not found in the claims of the present application.

Ex parte Steigerwald, 131 USPQ 74 (Bd. App. 1961) criticized "such as". (Id. at 75), but the words found objectionable in Steigerwald are not found in the claims of the present application. Finally, Ex parte Wu, 10 USPQ 2d 2031 (Bd. Pat. App. & Inter. 1989) criticized "such as" but did not criticize the use of the word "optionally" in the claim, notwithstanding that "optionally" resulted in a single claim with two possibly different claim scopes (one claim scope where a polyamine was present and another claim scope where a polyamine was not present). The Ex parte Wu decision is more closely allied to the instant case where, for example, in part "a" of the claim, the presence of the word "or" gives rise to a single claim with two possibly different claim scopes, one where the thickness of the reflective layer is in the range of between 20 and 100 nm and another where the thickness of the reflective layer is in the range of between 30 and 60 nm. It is irrelevant that one range is within the other range because, according to the claim, these are alternatives and, according to Ex parte Wu, they are not considered as together but as two possibly different claim scopes. Applicants submit that MPEP §2173.05(c) is inapplicable.

For the foregoing reasons, the rejection based upon 35 U.S.C. § 112 is respectfully traversed and reconsideration of the rejection is solicited.

3. **Rejection under 35 U.S.C. § 103.**

All claims except claim 21 were rejected based upon 35 U.S.C. §103 with the Office Action indicating that claim 21 would be allowable.

Independent claim 20, the sole independent claim, has been amended to include language from claim 21 that [the oxidized or nitrated metal of the reflective layer] is in an under-stoichiometric state.

Accordingly, it is submitted that claim 20, and all claims which depend from claim 20, are now allowable.

Claim 21 has been amended to remove the language that the oxidized or nitrated metal of the reflective layer is in an under-stoichiometric state, since that language now appears in the independent claim from which claim 21 depends, and claim 21 has been further amended to add that the light transmission is less than 3%. Support for this language may be found in the original PCT publication (WO 2004/034105) at page 4, lines 5-6. Accordingly, it is submitted that no new matter has been added.

4. **Objections to the Drawings.**

In response to the objections to the drawings as being too dark to make out the details, three replacement sheets are filed concurrently. It is submitted that no changes have been made other than to improve the clarity of the drawings. Approval and entry of the replacement sheets is respectfully solicited.

5. **Conclusion.**

For each of the foregoing reasons, reconsideration and allowance are respectfully solicited. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this application, the Examiner is requested to contact the undersigned.

Should any additional fees be due in connection with this Response, the Commissioner for Patents is hereby authorized to charge any deficiency in fees due with the filing of this document and during prosecution of this application to Deposit Account No. 50-0951.

Respectfully submitted,

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